

Message Text

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PAGE 01 BONN 14185 01 OF 02 301522Z
ACTION L-03

INFO OCT-01 EUR-12 ISO-00 JUSE-00 SCA-01 /017 W
-----114404 301545Z /46

P 301508Z AUG 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC PRIORITY 1023

LIMITED OFFICIAL USE SECTION 01 OF 02 BONN 14185

FOR L/M - MR. MALMBORG

E.O. 11652: NA
TAGS: CPRS, US, GW
SUBJECT: US-FRG EXTRADITION TREATY

REFS: (A) STATE 189169; (B) BONN 10362

1. AT FURTHER NEGOTIATING SESSION AUGUST 15, EMBOFF
PROPOSED NEW LANGUAGE FOR ARTICLE 1(2) OF TREATY
EXPLAINING BACKGROUND. WALTHER, FRG JUSTICE MINISTRY,
WAS DELIGHTED WITH THIS DEVELOPMENT WHICH, HE THOUGHT,
WOULD CONSIDERABLY FACILITATE FRG PARLIAMENTARY APPROVAL
TO RATIFICATION. WALTHER QUESTIONED NEED FOR CERTAIN
LANGUAGE IN PROPOSED TEXT AS REQUESTING STATE WOULD NOT
BE SEEKING EXTRADITION UNLESS IT HAD JURISDICTION TO
TRY PERSON FOR THE OFFENSE COMMITTED OUTSIDE ITS
TERRITORY. THUS, EMBASSY WOULD APPRECIATE APPROVAL TO
TEXT WHICH NOW READS AS FOLLOWS:

"(2) WHEN THE OFFENSE HAS BEEN COMMITTED OUTSIDE
THE TERRITORY OF THE REQUESTING STATE, THE REQUESTED
STATE SHALL GRANT EXTRADITION SUBJECT TO THE PROVISIONS
DESCRIBED IN THIS TREATY IF EITHER

(A) ITS LAWS WOULD PROVIDE FOR THE PUNISHMENT
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PAGE 02 BONN 14185 01 OF 02 301522Z

OF SUCH AN OFFENSE COMMITTED IN SIMILAR
CIRCUMSTANCES, OR

(B) THE PERSON WHOSE EXTRADITION IS REQUESTED
IS A NATIONAL OF THE REQUESTING STATE."

2. PER PARA 1 OF REFTL A, ADDITIONAL WORDS "OR OTHER

MEANS OF COMMUNICATION OR USE OF" HAVE BEEN ADDED TO ARTICLE 2(3)(B).

3. WALTHER PROPOSED THAT IN ARTICLE 14 (4)(B), THE WORDS "AND IS ENFORCEABLE" BE ADDED AFTER THE WORDS "THAT THIS JUDGMENT HAS FINAL AND BINDING EFFECT". EMBOFF AGREED THAT THIS WOULD IN EFFECT MORE ACCURATELY REFLECT GERMAN TEXT, IN PARTICULAR THE WORD "VOLLSTRECKBAR".

4. IN ARTICLE 26(3) WALTHER SUGGESTED REWORDING OF LAST THREE LINES TO READ AS FOLLOWS IN ORDER BETTER TO CONFORM WITH GERMAN TEXT: "REQUESTING STATE AND EITHER BY A STATEMENT MENTIONED IN ARTICLE 14(3)(B) OR BY A CONFIRMATION AS MENTIONED IN ARTICLE 14(4)(A)".

5. RE ARTICLE 33(1), WALTHER SAID FOREIGN OFFICE HAD INDICATED THAT IN THIS PART THE NORMAL ENGLISH VERSION OF BERLIN CLAUSE READS: "THIS TREATY SHALL ALSO APPLY TO LAND BERLIN PROVIDED THAT THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY DOES NOT MAKE A CONTRARY DECLARATION TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA WITHIN THREE MONTHS OF THE DATE OF ENTRY INTO FORCE OF THIS TREATY."

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PAGE 03 BONN 14185 01 OF 02 301522Z

6. RE PROPOSED TEXT OF PROTOCOL NOTE, EMBOFF POINTED OUT THAT AS US IS NOT PARTY TO THE GENOCIDE CONVENTION, HIS INSTRUCTIONS WERE THAT REFERENCE TO THAT CONVENTION WAS TO BE DELETED. WALTHER POINTED OUT THAT IF FRG SHOULD SEEK EXTRADITION FROM US OF PERSON SOUGHT FOR PROSECUTION IN FRG FOR GENOCIDE, ARTICLE 4(3)(B) WOULD APPLY BY ITS PRESENT WORDING TO PRECLUDE POLITICAL OFFENSES EXCEPTION AS A VALID DEFENSE AGAINST EXTRADITION (SEE "OR THE REQUESTING STATE"). EMBOFF AGREED THAT THERE MIGHT BE SOME MERIT IN LISTING GENOCIDE CONVENTION IN PROTOCOL NOTE IN ORDER TO MAKE THIS POINT. HE AGREED TO RECOMMEND THAT INSTRUCTIONS NOT TO INCLUDE REFERENCE TO GENOCIDE CONVENTION IN PROTOCOL NOTE BE RECONSIDERED. COMMENT: WHILE WALTHER IS CORRECT, EMBASSY ASSUMES THAT DEPARTMENT IS CONCERNED ABOUT POSSIBLE NEGATIVE REACTION OF SENATE TO ANY MENTION OF GENOCIDE CONVENTION IN DOCUMENTS CONNECTED WITH THE EXTRADITION TREATY. WE RECOGNIZE THAT WHILE

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PAGE 01 BONN 14185 02 OF 02 301520Z
ACTION L-03

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TO SECSTATE WASHDC PRIORITY 1024

LIMITED OFFICIAL USE SECTION 02 OF 02 BONN 14185

POLITICAL OFFENSES EXCEPTION WILL NOT BE AVAILABLE
UNDER TREATY AS DEFENSE AGAINST EXTRADITION TO FRG
FOR GENOCIDE, THERE IS NO CONSTITUTIVE NEED EXPRESSLY
TO REFER TO GENOCIDE CONVENTION IN PROTOCOL NOTE.

7. WALTHER REFERRED TO OFFENSE 20(B), IN PARTICULAR THE
REFERENCE TO "JURY SERVICE" WHICH HE SUGGESTED BE
TRANSLATED IN GERMAN TRANSLATION AS "NON-PROFESSIONAL
JUDGES". EMBOFF STATED THAT THIS COULD CAUSE PROBLEMS
IF INTIMIDATION OF MEMBER OF US JURY IS THE SUBJECT OF
US EXTRADITION REQUEST AND THE GERMAN LANGUAGE TEXT,
EQUALLY AUTHENTIC UNDER FINAL PROVISION OF TREATY AND
THUS PROBABLY THE ONLY ONE RELIED ON IN THE FRG DURING
EXAMINATION OF THAT EXTRADITION REQUEST, SPEAKS ONLY OF
NON-PROFESSIONAL JUDGES (LAY JUDGES). WALTHER AND
EMBOFF FINALLY AGREED TO PROPOSE INCLUSION IN PROTOCOL
NOTE OF A PARAGRAPH CONCERNING INTERPRETATION OF
OFFENSE 20(B), LANGUAGE OF WHICH WOULD READ IN TRANS-
LATION AS FOLLOWS: "THE CONTRACTING PARTIES MUTUALLY
AGREE TO INTERPRET NUMBER 20(B) OF THE ANNEX TO THE
TREATY AS MEANING THAT THE TERMS "JURY SERVICE" AND
"EHRENAMTLICHER RICHTER" APPLY TO PERSONS WHO IN THE
LEGAL PRACTICE OF BOTH CONTRACTING PARTIES HAVE
CORRESPONDING FUNCTIONS (IN THE UNITED STATES OF
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PAGE 02 BONN 14185 02 OF 02 301520Z

AMERICA: MEMBERS OF A JURY; IN THE FEDERAL REPUBLIC OF

GERMANY: MEMBERS OF A COURT WHO ARE NOT JUDGES BY PROFESSION)."

8. EMBASSY IS TRANSMITTING COPIES OF ENGLISH AND GERMAN LANGUAGE VERSIONS OF THE TREATY AS OF AUGUST 15, 1977 WHICH REFLECT SEVERAL ADDITIONAL MINOR LANGUAGE AND GRAMMATICAL CHANGES TO IMPROVE, OR BETTER TO CONFORM, THE TEXTS.

9. ACTION REQUESTED: DEPARTMENT RESPONSE TO THE ABOVE, TRANSMISSION OF THE PAPERS REFERRED TO IN PARA 3 OF REFTTEL B, AND DEPARTMENT REACTION TO PARAS 8 AND 9 OF REFTTEL B CONCERNING TYPING ARRANGEMENTS AND PRESS RELEASE CONCERNING SIGNING OF TREATY.
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